

is subject to the satisfaction (or written waiver by Teleglobe) of each of the following further conditions:

9.3.1 Compliance by Buyer. Buyer will have performed and complied with in all material respects all material obligations required to be performed or complied with by it under this Agreement at or prior to the IMA Date, and Sellers will have received a certificate signed by an officer of Buyer, acting on behalf of Buyer, to the foregoing effect.

9.3.2 Accuracy of Buyer's Representations. The representations and warranties of Buyer contained in this Agreement that are qualified as to materiality will be true in all respects, and those that are not so qualified will be true in all material respects, at and as of the IMA Date as if made at and as of such time (other than representations and warranties made as of a specified time or date which will speak at and as of such specified time or date), and Sellers will have received a certificate signed by an officer of Buyer, acting on behalf of Buyer, to the foregoing effect.

9.3.3 Approval of DIP Lender. The DIP Lender will have provided its consent to the transactions contemplated hereby and by the Interim Management Agreement and UK Interim Management Agreement and each of the Sale Approval Orders will have been entered and become a Final Order, providing that all Liens in favor of the DIP Lender or its assigns or participants on the Purchased Assets will be fully released on the Closing Date.

9.3.4 Documents. Buyer will have delivered the items to be delivered by it listed in Section 4.3.

9.3.5 Approval of Bankruptcy Courts. The Sale Approval Orders required to be delivered under this Agreement will have been entered and become Final Orders, and such orders will not have been stayed or vacated.

9.4 Conditions to the Obligations of Buyer. The obligation of Buyer to enter into the Interim Management Agreement and the UK Interim Management Agreement is subject to the satisfaction (or written waiver by Buyer) of each of the following further conditions:

9.4.1 Compliance by Sellers. The Sellers will have performed and complied with in all material respects all material obligations required to be performed or complied with by any of them under this Agreement at or prior to the IMA Date, and Buyer will have received a certificate signed by an executive officer of Teleglobe to the foregoing effect.

9.4.2 Accuracy of Representations. The representations and warranties of the Sellers contained in this Agreement, restated for purposes of this Section 9.4.2 without giving effect to any language therein which limits the scope of or otherwise qualifies any such representation or warranty based on any standard of materiality or any similar concept, including by reference to a Material Adverse Effect, will be true and correct in all respects at and as of the IMA Date as if made at and as of such time (other than representations and warranties made as of a specified time or date which will speak at and as of such specified time or date), except for any breaches or inaccuracies which do not, either individually or in the aggregate, result in a Material Adverse Effect (it being understood, however, in any event, any breach or inaccuracy which,

either individually or when aggregated with any other breaches or inaccuracies, results in or reflects direct or indirect adverse consequences to Buyer in excess of \$10,000,000 shall be deemed for purposes of this Section 9.4.2, to have a Material Adverse Effect), and Buyer will have received a certificate signed by an executive officer of Teleglobe to the foregoing effect.

**9.4.3 Documents.** The Sellers will have delivered or caused to be delivered the items to be delivered by it or by the UK Administrators listed in Section 4.3

**9.4.4 Consents.** The Consents of Governmental Entities listed on Schedule 9.4.4(A) will have been obtained, and the Consents of the Persons listed on Schedule 9.2.2 with respect to Material Contracts will have been obtained (which Consent, in the case of the Bell Contracts will contain provisions satisfactory to Buyer in its reasonable discretion substantially similar in form and substance to those provisions set forth on Schedule 9.4.4(B)) or, with respect to the Bell Contracts, an order will have been entered by the CCAA Court in form and substance satisfactory to Buyer in its reasonable discretion, and such order will have been entered and become a Final Order and will not have been stayed or vacated.

**9.4.5 Approval of Bankruptcy Courts.** The Sale Approval Orders will have been entered and become Final Orders, and such orders will not have been stayed or vacated.

**9.4.6 Migration Transactions.** The representation contained in Section 6.19 will be true and correct in all material respects

**9.4.7 Hive Down Agreements.** The Hive Down Agreement, the Share Sale Agreement and the Debenture will have been duly and validly executed and delivered by each of the parties thereto, will be in full force and effect, and all conditions precedent set forth therein (other than in the Share Sale Agreement) will have been satisfied.

**9.4.8 No Material Adverse Change.** (i) Since the date of this Agreement, there shall have not occurred any change in (a) the operations, condition (financial or otherwise), operating results and employee relations with respect to the Core Business (except to the extent caused by Buyer's failure to offer all or substantially all of the present employees with respect to the Core Business, the right to continue such employment with Buyer on the terms contemplated by Sections 8.8 and 8.9), customer relations with respect to the Core Business (except to the extent resulting from Buyer declining to, or indicating it will not, continue doing business, or not continuing to do business, with such customer after the IMA Date in a manner and on terms similar to those in existence prior to the IMA Date), supplier relations with respect to the Core Business (except to the extent resulting directly from delays in the payment of amounts owing to suppliers of the Core Business directly as a result of the commencement and pendency of the Insolvency Proceedings or as a result of Buyer declining to or indicating it will not, continue doing business with such supplier after the IMA Date in a manner and on terms similar to those in existence prior to the IMA Date), or Purchased Assets, taken as a whole, (b) the ability of Buyer or any of the Newcos to succeed to or exercise rights or interests of Sellers that are necessary to operate the Core Business, or (c) the ability of Sellers to consummate the transactions contemplated by this Agreement, the Interim Management Agreement or the UK Interim Management Agreement in each case (meaning under clauses (a), (b) and (c)) the effect

of which has a Material Adverse Effect, and (ii) Buyer will have received a certificate executed by an executive officer of Teleglobe to the effect that to the Knowledge of Sellers, the matters set forth in clause (i) of this Section 9.4.8 are true and correct.

9.4.9 Approval of DIP Lender. The DIP Lender will have provided its consent to the transactions contemplated hereby and by the Interim Management Agreement and UK Interim Management Agreement and each of the Sale Approval Orders will have been entered, which order shall have become a Final Order, providing that all Liens in favor of the DIP Lender or its assigns or participants on the Purchased Assets will be fully released on the Closing Date.

9.4.10 Insurance. The insurance required to be maintained by the Companies (as defined in the Interim Management Agreement) pursuant to Section 9 of the Interim Management Agreement will be in full force and effect and will name the Buyer as loss payee or additional insured thereunder.

#### ARTICLE X

#### CONDITIONS TO CLOSING

10.1 Conditions to the Obligations of Each Party. The obligations of Buyer and Sellers to consummate the Closing are subject to the satisfaction of the following conditions:

10.1.1 No Injunction. There will not have been entered a preliminary or permanent injunction, temporary restraining order or other judicial or administrative order or decree of any Bankruptcy Court or any other court of competent jurisdiction, the effect of which prohibits the Closing or the transactions contemplated hereby.

10.2 Conditions to the Obligations of Sellers. The obligation of Sellers to consummate the Transfer of the Purchased Assets and the Contracts (other than Rejected Contracts) is subject to the satisfaction (or written waiver by the Key Sellers) of each of the following further conditions:

10.2.1 Approval of Bankruptcy Courts. All Bankruptcy Court Orders will have been entered and not been modified or vacated, and no stay of the Bankruptcy Court Orders pending appeal will have been entered.

10.2.2 Documents. Sellers will have received the items listed in Section 5.2.3(b).

10.2.3 Payment of Final Purchase Price. Teleglobe will have received (for the benefit of all Sellers), via wire transfer of immediately available funds to an account designated by Teleglobe, the Closing Payment Amount (it being understood that for all purposes of this Agreement all payments made by Buyer or its Affiliates to Teleglobe shall be deemed to be made in satisfaction of obligations owing to all Sellers hereunder), and Buyer shall have deposited any Disputed Amounts, any amounts disputed pursuant to Sections 4.4.1 and 4.4.3.2, any amounts withheld pursuant to Section 6.14 and any amounts to be deposited into escrow pursuant to Section 4.4.7 pending resolution of such disputes pursuant to this Agreement.

10.2.4 Governmental Consents The following Consents of Governmental Entities necessary to consummate the transactions contemplated hereby will have been obtained

- (a) the Commissioner of Competition will have issued an Advance Ruling Certificate under Section 102 of the Competition Act in respect of the transactions contemplated hereby or the applicable waiting period under Section 123 of the Competition Act will have expired or the parties will have received a waiver from the obligation to notify under Part IX of the Competition Act pursuant to Subsection 113(c) of the Competition Act;
- (b) notice that the responsible Minister under the Investment Canada Act is satisfied that the transaction contemplated herein is likely to be of net benefit to Canada or that the transactions contemplated hereby is not reviewable;
- (c) Consents as necessary will have been granted by the relevant Governmental Entities ("Grants") respecting the transfer, assignment or reauthorization of the Telecommunications Operating Authorities, Submarine Cable Landing Licenses and the Radio Communications Licenses, Class A Basic International Telecommunications Service License and of any other Permit or, if required, of any Contract, except for such consents and approvals that would not subject any Seller or any of its Affiliates to any criminal liabilities other than immaterial fines or penalties levied against Persons (other than natural persons),
- (d) consents or clearances (including deemed consents and clearances) in form and substance reasonably satisfactory to Buyer as are required, or reasonably considered to be applicable by Buyer, under any merger control rules of any state or jurisdiction where any Seller carries on business;
- (e) if required it being established in terms reasonably satisfactory to the Buyer, that it is not the intention of the European Commission to initiate proceedings under Article 6(1)(c) of Council Regulation (EEC) 4064/89 (as amended) (the "ECMR"); provided that, this condition will be deemed satisfied if the European Commission makes a referral of all or part of the arrangements contemplated by this Agreement to a competent authority of the United Kingdom under Article 9(1) of the ECMR and the UK Office of Fair Trading shall have indicated in terms reasonably satisfactory to the Buyer that the Secretary of State for Trade and Industry does not intend to refer the proposed acquisition of the Purchased Assets by the Buyer to the UK Competition Commission;
- (f) the expiration or termination of any applicable waiting periods under the HSR Act.

10.3 Conditions to the Obligations of Buyer. The obligation of Buyer to consummate the Transfer of the Purchased Assets is subject to the satisfaction (or written waiver by Buyer) of each of the following further conditions:

10.3.1 Documents. Buyer will have received the items listed in Sections 5.2.2 and 5.2.4.

10.3.2 Interim Management Agreements. Neither the Interim Management Agreement nor the UK Interim Management Agreement shall have been terminated or rescinded.

10.3.3 Approval of Bankruptcy Courts. All Bankruptcy Court Orders will have been entered and not been modified or vacated, and no stay of the Bankruptcy Court Orders pending appeal will have been entered. None of the orders described in Sections 9.2.3, 9.3.3 or 9.4.4 will have been modified in any manner that has an adverse effect on Buyer or vacated since the DMA Date.

10.3.4 Consents. The Consents of the Persons listed on Schedule 10.3.4 will have been obtained.

10.3.5 Asset Drop Downs And Share Sale. The Purchased Assets, to the extent requested by Buyer pursuant to Section 2.1.2 of this Agreement, will have been duly and validly transferred to the applicable Newco, as contemplated by, with respect to the UK Sellers, the Ilive Down Agreement, the Share Sale Agreement and Section 5.2.4 hereof or with respect to the other Sellers, the documents described in Section 2.1.2 of this Agreement. Teleglobe will have executed the Agreed Loan in favor of UK Newco and paid the proceeds of such Agreed Loan on behalf of UK Newco to the UK Sellers; the TLUK and the UK Administrators will have executed the Deed of Release and transferred to the UK Newco any of the Purchased Assets which were subject to the Debenture and which were required to be transferred back to the UK Newco following the discharge of the Debenture, the Transfer of the Equity Interests of UK Newco to Teleglobe, by the completion of the Share Purchase Agreement, will have occurred, and UK Newco and Teleglobe will have effected the Capitalization and Teleglobe will have entered into the Deed of Waiver.

10.3.6 UK Newco. All amounts owed by UK Newco to any Seller (or its assignee) will have been discharged in full without any cost, liability or obligation to UK Newco.

10.3.7 Migration Transactions. The Sellers will have performed the covenant set forth in Section 8.15 in all material respects.

10.3.8 Governmental Consents. The following Consents of Governmental Entities necessary to consummate the transactions contemplated hereby will have been obtained:

- (a) the Commissioner of Competition will have issued an Advance Ruling Certificate under Section 102 of the Competition Act in respect of the transactions contemplated hereby or the applicable waiting period under Section 123 of the Competition Act will have expired or the parties will

have received a waiver from the obligation to notify under Part IX of the Competition Act pursuant to Subsection 113(c) of the Competition Act;

- (b) notice that the responsible Minister under the Investment Canada Act is satisfied that the transaction contemplated herein is likely to be of net benefit to Canada or that the transactions contemplated hereby is not reviewable;
- (c) Grants respecting the transfer, assignment or reauthorization of the Telecommunications Operating Authorities, Submarine Cable Landing Licenses and the Radio Communications Licenses, Class A Basic International Telecommunications Service License and of any other Permit (except with respect to the Permit for the fixed microwave facility in Lamaline, Newfoundland (call sign CGJ-645)) or, if required, of any Contract, except for such consents and approvals that would not have, individually or in the aggregate, a Material Adverse Effect or not subject the Buyer or any of its Affiliates to any criminal liabilities other than immaterial fines or penalties levied against Persons (other than natural persons), and, with respect to each such Grant, the time for appealing or filing petitions for reconsideration, review or to set aside such Grant, and the time for any Governmental Entity on its own motion to reconsider, review or set aside such Grants shall have expired, or at least 40 days shall have passed from the last date such Grants have become effective, except with respect to the Class A Basic International Telecommunications Service License, in which case either (i) 90 days shall have passed from the date of such Grant, or (ii) 40 days shall have passed from the last date that the Grants in respect of the Canadian Submarine Cable Landing License and the Canadian Radio Communications Licenses shall have been issued by Industry Canada, whichever is earlier.
- (d) consents or clearances (including deemed consents and clearances) in form and substance reasonably satisfactory to Buyer as are required, or reasonably considered to be applicable by Buyer, under any merger control rules of any state or jurisdiction where any Seller carries on business;
- (e) if required, it being established, in terms reasonably satisfactory to the Buyer, that it is not the intention of the European Commission to initiate proceedings under Article 6(1)(c) of Council Regulation (EEC) 4064/89 (as amended) (the "ECMR"); provided that, this condition will be deemed satisfied if the European Commission makes a referral of all or part of the arrangements contemplated by this Agreement to a competent authority of the United Kingdom under Article 9(1) of the ECMR and the UK Office of Fair Trading shall have indicated in terms reasonably satisfactory to the Buyer that the Secretary of State for Trade and Industry does not intend to

refer the proposed acquisition of the Purchased Assets by the Buyer to the UK Competition Commission:

- (f) the expiration or termination of any applicable waiting periods under the HSR Act

10.3.9 Stay Process. The stay of actions and proceedings, including the stay prohibiting the cancellation of contracts, imposed by the CCAA Proceeding, shall have continued and be in force substantially as at the date hereof or shall have been replaced by another stay of the same effect

#### ARTICLE XI

#### TERMINATION

11.1 Termination. This Agreement may be terminated and the transactions contemplated hereby shall be abandoned at any time prior to the Closing:

11.1.1 Mutual Consent. By mutual written consent of Teleglobe and Buyer.

11.1.2 Termination by Sellers. By the Key Sellers, upon written notice to Buyer, (a) if the IMA Date will not have occurred prior to December 31, 2002 or the Closing will not have occurred prior to August 31, 2003, provided none of the Sellers will have caused such failure to have occurred by breaching any representation, warranty, covenant or agreement contained herein, (b) so long as Buyer is not then entitled to terminate this Agreement pursuant to Section 11.1.3(b), if (i) Buyer is in material breach of any covenant contained (A) in this Agreement at any time prior to or on the IMA Date, which breach shall be incapable of being cured or, if capable of being cured shall not have been cured by the earlier of the IMA Date or the date that is 30 days following (in each case) Buyer's receipt of written notice from the Key Sellers of such default or breach (specifying in reasonable detail the claimed default or breach) or (B) in this Agreement, the Interim Management Agreement or the UK Interim Management Agreement at any time after the IMA Date, which breach shall be incapable of being cured or, if capable of being cured shall not have been cured by the earlier of the Closing Date or the date that is 30 days following (in each case) Buyer's receipt of written notice from the Key Sellers of such default or breach (specifying in reasonable detail the claimed default or breach) or (ii) it is not the case that, upon the earlier of the IMA Date and the date that is 30 days following (in each case) Buyer's receipt of written notice from the Sellers of a breach of any representation or warranty (specifying in reasonable detail the claimed breach), the representations and warranties of Buyer contained in this Agreement or the Interim Management Agreement that are qualified as to materiality are true in all respects and those that are not so qualified are true in all material respects as of such date (and, if later, the IMA Date), or (c) if any Bankruptcy Court (whose approval is required) denies approval of this Agreement, the Interim Management Agreement or the UK Interim Management Agreement.

11.1.3 Termination by Buyer. By Buyer, upon written notice to Teleglobe, (a) if the IMA Date will not have occurred prior to December 31, 2002 or the Closing will not have occurred prior to August 31, 2003, provided Buyer will not have caused such failure to have

occurred by breaching any of its representations, warranties, covenants or agreements contained herein, (b) prior to the IMA Date, so long as the Key Sellers are not then entitled to terminate this Agreement pursuant to Section 11.1.2(h), if any of the Key Sellers' representations and warranties have been materially breached (without giving effect to any language therein that limits the scope of or otherwise qualifies any such representation or warranty based on any standard of materiality or any similar concept, including by reference to a Material Adverse Effect) except for breaches or inaccuracies that did not, either individually or in the aggregate, result in a Material Adverse Effect (it being understood, however, in any event, any breach or inaccuracy with, either individually or when aggregated with any other breaches or inaccuracies, results in direct or indirect adverse consequences to Buyer in excess of \$10,000,000 shall be deemed for purposes of this Section 11.1.3(h), to have a Material Adverse Effect), or any of the Key Sellers is in material breach of any material covenant contained herein, unless such breach or inaccuracy has been cured by the earlier of the IMA Date or 30 days following the date Buyer provides Teleglobe written notice thereof (which notice Buyer shall deliver to Teleglobe promptly following the time at which Buyer becomes aware of such breach or inaccuracy and which notice shall specify in reasonable detail the claimed breach or inaccuracy), (c) on or after the IMA Date but prior to the Closing, so long as Key Sellers are not then entitled to terminate this Agreement under Section 11.1.2(h), if any of the Key Sellers is in material breach of any of the covenants contained in Section 8.13 or Section 8.15 of this Agreement or any material covenant contained in the Interim Management Agreement or the UK Management Agreement and such breach is caused by actions of any of the persons listed on Schedule 11.1.3(c) (it being understood that if the breach is caused by an act or omission of an Employee who reports to the Manager under the Interim Management Agreement or the UK Management Agreement, such breach shall not give Buyer a termination right), unless such breach has been cured within 30 days following the date on which Buyer provides Teleglobe written notice thereof (which notice shall be delivered to Teleglobe promptly following the time at which Buyer becomes aware of such breach and which notice shall specify in reasonable detail the claimed breach), (d) if any Bankruptcy Court disapproves of this Agreement, the Interim Management Agreement or the UK Interim Management Agreement, (e) if Buyer's rights under Section 11.3 are held invalid or unenforceable, in whole or in any material part or in the event of a Competing Transaction or (f) if the Canadian Transaction Notice is not filed on or before the date that is five Business Days after the date hereof, and if either the CCAA Court or the US Bankruptcy Court has not entered the applicable Sales Approval Order in substantially the form of Exhibits L-1 and L-2 or on other terms satisfactory to Buyer or such Sales Approval Order shall not become a Final Order on or before the date that is 75 days after the date hereof



**11.2 Effect of Termination.** In the event of the termination of this Agreement pursuant to Section 11.1, except for the provisions of the Interim Management Agreement and the UK Interim Management Agreement that expressly survive the termination thereof and except for the provisions of the last sentences of Section 4.2, Section 8.2 and Section 11.3, this Section 11.2, and Sections 13.4, 13.7, and 13.10, the Interim Management Agreement, the UK Interim Management Agreement and this Agreement will forthwith become null and void and have no effect without any liability on the part of any Party or their respective Affiliates. Nothing in this Article XI will, however, relieve any Party of liability for breach of this Agreement occurring prior to such termination, or for breach of any provision of this Agreement which specifically survives termination hereunder.

**11.3 Breakup Fee and Expense Reimbursement.**

**11.3.1 Breakup Fee.** Unless this Agreement is terminated pursuant to Section 11.1.2(a) or (b), if the Sellers (i) terminate this Agreement (ii) sell, transfer, lease or otherwise dispose directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction by any Seller or otherwise, all or substantially all or a material portion of the Purchased Assets (or agree to do any of the foregoing) in a transaction to a party or parties other than Buyer or an Affiliate of Buyer within two years from the date hereof, or choose not to sell, transfer, lease, or otherwise dispose of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by any Seller or otherwise), all or substantially all or a material portion of the Purchased Assets (or agree to do any of the foregoing) to Buyer or an Affiliate of Buyer whether as a result of the proposal or of a stand alone plan of reorganization (a "Competing Transaction") or otherwise or (iii) execute an agreement with respect to a Competing Transaction, or Buyer terminates this Agreement in the event of a Competing Transaction pursuant to Section 11.1.3(e), Tele globe will pay to Buyer a breakup fee in the amount of \$4,659,000 (the "Breakup Fee"), which fee shall be payable by Tele globe in immediately available US federal funds upon the earlier to occur of (x) termination of this Agreement and (y) any execution of a definitive agreement with respect to a Competing Transaction; provided that if this Agreement is terminated pursuant to Section 11.1.2(a) and within 12 months after the date of such termination Sellers publicly announce or enter into a definitive agreement for a Competing Transaction, Tele globe will pay to Buyer the Breakup Fee in the manner described above.

**11.3.2 Expense Reimbursement.** If (a) Buyer terminates this Agreement for any reason, or (y) Sellers terminate this Agreement for any reason other than pursuant to Section 11.1.2(b) Tele globe shall promptly reimburse Buyer, by wire transfer of immediately available US federal funds, for its reasonable out-of-pocket expenses incurred by it in connection with this Agreement or the transactions contemplated hereby (the "Expense Reimbursement"), provided however, the Expense Reimbursement will not exceed the amount equal to \$4,000,000 minus the portion of the reimbursement of up to \$400,000 actually received provided for pursuant to a letter regarding expenses from Ernst & Young Inc. to TenX Capital Partners dated August 2, 2002 (the "E&Y Expense Letter"). The Expense Reimbursement will be in any event be deemed reasonable if less than an aggregate of \$1,500,000 and shall be paid by Tele globe on the date on which the Breakup Fee is to be paid or, if no Breakup Fee is to be paid, upon termination of this Agreement, provided that, if the aggregate amount of the Expense Reimbursement exceeds

\$1,500,000 ("*Expense Cap*"). Telelobe shall not be obligated to reimburse the portion in excess of such amount until Buyer has delivered to Telelobe reasonable documentation supporting such Expense Reimbursement.

11.3.3 Treatment of Breakup Fee and Expense Reimbursement. Telelobe's obligation to pay the Breakup Fee and the Expense Reimbursement pursuant to this Section 11.3 shall survive termination of this Agreement and Telelobe shall request the CCAA Court to provide that (i) the Break-up Fee shall be paid in priority to the Administrative Charge, the CCAA Lender's Charge and the Directors' Charge (all as defined in the initial order of the CCAA Court made in the CCAA Proceedings on May 15, 2002, together with any other charges made by the CCAA Court in the CCAA Proceedings subsequent to May 15, 2002) and (ii) the Expense Reimbursement shall be paid in priority to the Administrative Charge and the Directors' Charge.

#### ARTICLE XII

##### SURVIVAL

EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE VI, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, (INCLUDING ANY REPRESENTATIONS OR WARRANTIES AS TO THE QUALITY OR FITNESS OF THE PURCHASED ASSETS FOR THEIR INTENDED PURPOSES OR ANY PARTICULAR PURPOSE) WITH RESPECT TO SELLERS, THE NEWCOS' EQUITY, THE CORE BUSINESS, THE PURCHASED ASSETS, THE CONTRACTS OR THE ASSUMED LIABILITIES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EXCEPT AS EXPRESSLY SET FORTH IN ARTICLE VI, SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO (a) ANY PROJECTIONS, ESTIMATES OR BUDGETS DELIVERED TO OR MADE AVAILABLE TO BUYER OF THE FUTURE RESULTS OF OPERATIONS, CASH FLOWS OR FINANCIAL CONDITION (OR ANY COMPONENT OF ANY OF THEM) OF THE CORE BUSINESS, OR (b) ANY OTHER INFORMATION OR DOCUMENTS MADE AVAILABLE TO BUYER OR ITS REPRESENTATIVES REGARDING SELLERS, THE NEWCOS' EQUITY, THE CORE BUSINESS, THE PURCHASED ASSETS, THE CONTRACTS OR THE ASSUMED LIABILITIES. The representations and warranties of the Parties contained in this Agreement (or in any certificate delivered pursuant herein) will expire on the later of (i) the Closing Date and (ii) the first anniversary of the IMA Date except with respect to claims asserted with respect to such representations and warranties prior to such expiration in which case they will survive until the resolution of such claims in accordance with this Article XII. The covenants of the Parties contained in this Agreement will remain operative and in full force and effect without any time limitation, except as any such covenant is limited in duration by the express terms hereof. In the event that a Party believes that a representation or warranty of another Party had been breached when made as of the date of this Agreement or the IMA Date, it shall notify the other Party within 90 days after the IMA Date of such breach (it being understood that the failure to so assert such claim will not be a waiver thereof but only will prevent Buyer from exercising its rights under the last sentence of this Article XII) (a "*Breach Notice*"), specifying the nature of such breach in reasonable detail, and setting forth its good faith estimate of the loss, liability, damage or expense ("*Losses*") incurred by such Party as a result thereof. In the event that a Party believes that a covenant of another Party has been breached prior to the Closing, it may promptly

prior to the Closing, give a Breach Notice, specifying the nature of such breach in reasonable detail, and setting forth its good faith estimate of the Losses incurred by such Party as a result thereof. To the extent that Buyer delivers a Breach Notice prior to the 90<sup>th</sup> day after the EMA Date, an amount equal to the aggregate amount of such estimated Losses (the "*Disputed Amount*"), shall be deposited in the Escrow Account to be held until the claim is resolved in accordance with Section 5.2.5.

#### ARTICLE VIII

##### MISCELLANEOUS

13.1 Entire Agreement. This Agreement, including the Schedules and Exhibits to this Agreement, the Confidentiality Agreements, the E&Y Expense Letter (and, when executed and delivered, the agreements and instruments executed and delivered pursuant to the terms of this Agreement) constitute the entire agreement of the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, with respect to the subject matter hereof and thereof.

13.2 Notices. All notices, requests and other communications to any Party hereunder will be in writing and will be deemed to have been given (i) when delivered personally to the recipient, if during business hours on a Business Day, (ii) when received by facsimile, if appropriate confirmation of such receipt occurs during business hours on a Business Day and otherwise on the next succeeding Business Day, but only so long as a copy thereof is also delivered to the recipient by reputable overnight courier service (charges prepaid), (iii) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid), or (iv) four Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid. All notices, requests and other communications to any Party hereunder will be given

if to any Seller (or Teleglobe), to:

c/o Teleglobe Inc  
11495 Commerce Park Drive  
Reston, Virginia 20191  
Attention: Chief Executive Officer  
Facsimile: (703) 755-2600

with copies to

Ernst & Young Inc.  
Ernst & Young Tower  
Toronto - Dominion Centre  
222 Bay Street, P.O. Box 251  
Toronto, Ontario M5K 1J7  
Attention: Benjamin J. Babcock  
Facsimile: (416) 943-3300

and to:

Jones, Day, Reavis & Pogue  
2727 North Harwood Street  
Dallas, Texas 75201  
Facsimile: (214) 969-5100  
Attention: Michael Weinberg, Esq.

and to

Ogilvy Renault  
200 King Street West  
Suite 1100  
Merrill Lynch Canada Tower  
Toronto, Ontario M5H 3T4  
Facsimile: (416) 977-5239  
Attention: Derrick C. Tay, Esq.

it to Buyer to

TLGB Acquisition LLC  
c/o Cerberus Capital Management LP  
456 Park Avenue  
New York, New York 10022  
Facsimile: (212) 891-1541  
Attention: Seth Plattus  
Leonard Tessler

with a copy to:

Schulte Roth & Zabel LLP  
919 Third Avenue  
New York, New York 10022  
Facsimile: (212) 595-5955  
Attention: Stuart D. Freedman, Esq.

TenX Capital Partners  
One Park Avenue, 18<sup>th</sup> Floor  
New York, New York 10016  
Facsimile: (212) 616-3159  
Attention: George K. Kollindes, II

or such other address or facsimile number as such Party may hereafter specify for such purpose by notice to the other Parties.

### 13.3 Amendments and Waivers.

13.3.1 Writing Required. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Key Sellers and Buyer or in the case of a waiver, by the party against whom the waiver is to be effective.

13.3.2 No Implied Waiver. No failure or delay by any Party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13.4 Expenses. Except as otherwise provided in this Agreement or the E&Y Expense Letter, all costs and expenses incurred in connection with this Agreement will be paid by the party incurring such cost or expense. All filing fees associated with Consents of Governmental Entities necessary to consummate the Transfers and other transactions contemplated hereby (including those associated with any filings under the *Competition Act*, the *Investment Canada Act*, any HSR Filings or fees associated with transfer or re-issue of the Telecommunications Operating Authorities, Submarine Cable Landing Licenses or the Radio Communications Licenses) or any other Permits will be treated as a Business Expense pursuant to the Interim Management Agreement and the UK Interim Management Agreement, provided that if the Interim Management Agreement is terminated in accordance with its terms, such fees that were accrued but not paid prior to such termination will be paid by Teleglobe. All sales, use, transfer, goods and services, land transfer, stamp or similar Taxes imposed by any Governmental Entity, and all recording, filing, notarial or similar fees incurred, in connection with the transactions contemplated by this Agreement (collectively, "*Transfer Taxes*") will be borne solely by Sellers, provided, however, that Sellers will not bear responsibility for Transfer Taxes that consist of Goods and Services Tax under Part IX of the *Excise Tax Act* (Canada) and Quebec Sales Tax under the *Quebec Sales Tax Act* with respect to the transfer of Purchased Assets which are subject to such Taxes to Buyer, its Affiliate or a Newco, as the case may be, unless Buyer, such Affiliate or such Newco is, prior to the time of Closing, registered under the *Excise Tax Act* (Canada) and the *Quebec Sales Tax Act* and has supplied Sellers with evidence of such registrations at least three Business Days prior to Closing. Sellers shall cooperate with Buyer, its Affiliates and Newcos and timely provide all information necessary to obtain such registrations. The Sellers shall, at their own expense and with the cooperation of Buyer, prepare and timely file all required Tax Returns related to the Transfer Taxes. For greater certainty, Buyer will cooperate, and will cause its Affiliates and the Newcos and Acquired Entities to cooperate, with the Sellers with respect to the filing of any elections available under the relevant legislation which will reduce or eliminate any Transfer Taxes. Sellers will provide assurances reasonably satisfactory to Buyer that Sellers have paid, on or before the date such payments are required by the relevant legislation, all Goods and Services Tax owing under the *Excise Tax Act* (Canada) and all Quebec Sales Tax owing under the *Quebec Sales Tax Act*. Where a Seller pays on behalf of Newco or Buyer any Transfer Taxes payable by Newco or Buyer pursuant to the relevant tax legislation, Seller shall, on behalf of Newco or Buyer, as the case may be, and as soon as practicable, file a request or claim for any refund or credit of Transfer Taxes to which Newco or Buyer, as the case may be, is entitled and Newco shall cooperate with the Seller to allow the

Seller to claim such refund or credit on behalf of Newco or Buyer. Newco and Buyer will remit to the Seller the amount of such refund or credit, and any interest payable to Newco or Buyer thereon, on the date on which it is received by Newco or Buyer. If the refund or credit (and interest thereon) received by Newco is reduced in respect of taxes otherwise payable or remittable for which Newco or Buyer is liable pursuant to this Agreement, the amount to be paid by Newco or Buyer to the Seller shall be increased so that the Seller receives the full amount of the refund or credit (and interest thereon) calculated as if there had been no such reduction; provided, however, that if Newco or Buyer is contesting such reduction, Newco or Buyer shall pay such amount when such contest is resolved.

**13.5 Successors and Assigns** The Other Sellers and UK Administrators are third party beneficiaries of Section 3.2 of this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Buyer may not Transfer or delegate any of its rights or obligations under this Agreement to any Person without the prior written consent of Telelobe; provided that Buyer may, without the consent of Telelobe or any other Seller, assign all or any portion of its rights and obligations hereunder, in whole or in part, to any one or more of its Affiliates, provided further that no such assignment shall relieve Buyer of its obligations hereunder. Notwithstanding anything to the contrary contained in this Agreement, except as set forth in the first sentence of this Section 13.5, nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the Parties or their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

#### **13.6 Certain References and Interpretive Matters.**

**13.6.1 Certain References** Unless the context otherwise requires, (a) all references in this Agreement to Sections, Articles, Exhibits or Schedules are to Sections, Articles, Exhibits or Schedules of or to this Agreement, (b) each term defined in this Agreement has the meaning ascribed to it, (c) words in the singular include the plural and vice versa, (d) all references to "\$" or dollar amounts are to lawful currency of the United States of America and all references to "A\$" are to the lawful currency of the Commonwealth of Australia, (e) undefined words and abbreviations which have well known technical or trade meanings, or meanings which are derived by Sellers' common internal terms of reference, are used herein in accordance with such recognized meanings, (f) the verb "will" will have a mandatory connotation, indicating the Parties' respective obligations to each other and its connotation will be identical to the word "shall", (g) the word "including" will mean "including without limitation", and (h) all accounting calculations and determinations made pursuant to this Agreement will, except to the extent otherwise specified in this Agreement and the Schedules hereto, be made in accordance with United States generally accepted accounting principles applied on a basis consistent with prior periods and, to the extent consistent with United States generally accepted accounting principles, with the normal accounting practices and policies of Sellers. All certificates delivered hereunder shall be deemed to constitute representations and warranties of the Party or Parties on behalf of which such certification is made.

**13.6.2 Titles and Headings** Titles and headings to Sections and Articles in this Agreement are inserted for convenience of reference only, and are not intended to be a part

of or to affect the meaning or interpretation of this Agreement. No provision of this Agreement will be interpreted in favor of, or against, any of the Parties by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

13.6.3 Third Party Rights. Except as set forth in the first sentence of Section 13.5 the operation of the Contracts (Rights of Third Parties) Act 1999 is hereby excluded.

13.7 Governing Law. This Agreement will be construed in accordance with and governed by the internal substantive law of Ontario regardless of the laws that might otherwise govern under principles of conflict of laws applicable thereto. This Agreement is subject to any order or act of any of the Bankruptcy Courts applicable hereto, including without limitation the Bidding Procedures Orders.

13.8 Reserved.

13.9 Knowledge. For purposes of this Agreement, references to "Knowledge" of Sellers means (i) the actual knowledge of any of the officers and directors listed on Schedule 13.9, and (ii) except for the purposes of Section 9.4.8(ii), the actual knowledge such Persons would have after reasonably prudent inquiry based on standards of diligence and reasonableness as would be employed by comparably situated persons taking into account the nature and size of the transaction contemplated hereby. For purposes of this Agreement, references to "Knowledge" of Buyer means (i) the actual knowledge of any of the officers and directors of Buyer, and (ii) the actual knowledge such Persons would have after reasonably prudent inquiry based on standards of diligence and reasonableness as would be employed by comparably situated persons taking into account the nature and size of the transaction contemplated hereby.

13.10 Consent to Jurisdiction. Except as provided below, the Bankruptcy Courts will have concurrent jurisdiction over any dispute arising out of or in connection with transactions contemplated by this Agreement. If any dispute arising out of or in connection with the transactions contemplated by this Agreement exclusively involves the Newcos' Equity owned by Teleglobe or Teleglobe Canada Limited Partnership or the Purchased Assets owned by or Assumed Liabilities of Teleglobe or Teleglobe Canada Limited Partnership or the Newcos owned by Teleglobe or Teleglobe Canada Limited Partnership, then the CCAA Court will have exclusive jurisdiction over any such dispute. If any dispute arising out of or in connection with the transactions contemplated by this Agreement exclusively involves the Newcos' Equity owned by Teleglobe USA or Teleglobe Communications Corporation or the Purchased Assets owned by or Assumed Liabilities of Teleglobe USA or Teleglobe Communications Corporation or the Newcos owned by Teleglobe USA or Teleglobe Communications Corporation, then the US Bankruptcy Court will have exclusive jurisdiction over any such dispute. If any dispute arising out of or in connection with the transactions contemplated by this Agreement exclusively involves the Newcos' Equity owned by UK Sellers or the Purchased Assets owned by or Assumed Liabilities of UK Sellers or the Newcos owned by UK Sellers, then the UK Bankruptcy Court will have exclusive jurisdiction over any such dispute. The parties hereto consent to the jurisdiction of each of the Bankruptcy Courts (and of the respective appropriate appellate courts

therefrom) in any such dispute and irrevocably waive, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of the venue of any such dispute in any Bankruptcy Court or that any such dispute brought in a Bankruptcy Court has been brought in an inconvenient forum. Process may be served on any party thereto anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Courts. Without limiting the foregoing, the Parties agree that service of process on such Party may be made upon the designated Person at the address provided in Section 13.2 and will be deemed to be effective service of process on such Party.

13.11 Transmission by Facsimile The Parties agree that this Agreement may be transmitted by facsimile or such similar device and that the reproduction of signatures by facsimile or such similar device will be treated as binding as if originals and each Party undertakes to provide each and every other Party with a copy of the Agreement bearing original signatures forthwith upon demand.

13.12 Severability. If any provision of this Agreement is determined by a Governmental Entity to be invalid, void or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated. The invalid, void or unenforceable provisions will be rewritten to give effect to the intent thereof to the greatest extent permitted by applicable law.

13.13 Counterparts: Effectiveness This Agreement may be signed in any number of counterparts, each of which will be an original, with the same effect as if the signatures thereto and to this Agreement were upon the same instrument. This Agreement will become effective when each Party will have received counterparts hereof signed by each other Party.

13.14 Restrictive Legends Any certificates representing the Newcos' Equity or equity of Acquired Entities delivered by Teleglobe will be imprinted with a legend substantially in the following or another appropriate form:

The securities represented by this certificate have not been registered under the Securities Act of 1933, as amended.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

**BUYER:**

**TLGB ACQUISITION LLC**

By: CERBERUS PARTNERS, L.P.,  
its Managing Member

By: CERBERUS ASSOCIATES, L.L.C.,  
its General Partner

By: /s/ Lenard Tessler  
Name: Lenard Tessler  
Its: Authorized Signatory

**KEY SELLERS:**

**TELEGLOBE INC.**

By: /s/ John S. Brunette  
Name: John S. Brunette  
Title: Chief Executive Officer

**TELEGLOBE USA INC.**

By: /s/ John S. Brunette  
Name: John S. Brunette  
Title: Executive Vice President

**TELEGLOBE CANADA LIMITED  
PARTNERSHIP**

By: Teleglobe Inc., its general partner

By: /s/ John S. Brunette  
Name: John S. Brunette  
Title: Chief Executive Officer

**TELEGLOBE COMMUNICATIONS  
CORPORATION**

By: /s/ John S. Brunette  
Name: John S. Brunette  
Title: Executive Vice President

**OPTEL TELECOMMUNICATIONS, INC.**

By: /s/ John S. Brunette  
Name: John S. Brunette  
Title: President

**EXHIBIT A**

**DESCRIPTION OF CORE BUSINESS**

**Attached**

## **Exhibit A**

### **Core Business Description**

The "Core Business" shall mean that portion of the telecommunications business of Sellers relating to:

(i) international voice services where a customer's access/interconnection point to Sellers' telecommunications network is located at one of the POPs or collocation sites listed on Schedule 6.4.1 (Owned Real Property) or Schedule 1.1G (Leased Real Property) (or in the event that any such POP, collocation site or lease is not transferred to Buyer, such other replacement POP, collocation site or leased location as is reasonably acceptable to Buyer), including but not limited to Toll Free, Home Country Direct, Operator Services, EMS/SMS, ISDN and VoIP;

(ii) international data services where such services connect to Sellers' telecommunications network at a site listed on Schedule 6.4.1 (Owned Real Property) or Schedule 1.1G (Leased Real Property) (or in the event that any such POP, collocation site or lease is not transferred to Buyer, such other replacement POP, collocation site or leased location as is reasonably acceptable to Buyer), including but not limited to, Internet Connectivity, Private Line, ATM, Frame, Ethernet, and Broadcast, and

(iii) mobile Global Roaming services pursuant to the Joint Venture Agreement with Comfone AG.

**EXHIBIT B**

**AGREED LOAN**

*Attached*

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RAMIS ACCOUNTS RECEIVABLE - (c) DSG, Inc.  
RECEIPTS DETAIL REPORT  
SORTED BY TRANSACTION DATE, CD No., FEE CONTROL No

PAGE 1  
11/06/2003  
7:50:32

CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
743675	9/25/03	0309268835705010	0009480302	Teleglobe America Inc.	9/25/03	\$109,272.42
Seq: 1 Call Sign: FCC Code 1: FCC Code 2: Tin Number: PTC: 0376 QTY: 40926 Applied Amt: 109272.42 Applicant Name: TELEGLQBE AMERICA INC Address: 11495 COMMERCE PARK DRIVE						
743675	9/25/03	0309268835706003	0009480302	Teleglobe America Inc	9/25/03	\$22,159.42
Seq: 1 Call Sign: FCC Code 1: FCC Code 2: Tin Number: PTC: 0372 QTY: 11135386 Applied Amt: 22159.42 Applicant Name: TELEGLQBE USA INC Address: 11495 COMMERCE PARK DRIVE						
Total:				\$131,431.84		

